

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WEST COAST 2014-7, LLC,

Plaintiff,
-against-

JESUS ALBERTO PORTILLO-PENA;
ARELI S. AMAYA; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., AS NOMINEE FOR VERTICAL
LEND; BROOKHAVEN MEMORIAL
HOSPITAL; JUAN HERNANDEZ; and
JOSE LOPEZ,

Defendants.

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ORDER ADOPTING R&R

15-CV-6036 (DRH)(AKT)

Plaintiff West Coast 2014-7, LLC (“plaintiff”) commenced this action pursuant to Article 13 of the New York Real Property Actions and Proceedings Law against Defendants Jesus Alberto Portillo-Pena and Areli S. Amaya (together, the “Mortgagor Defendants”) to foreclose a mortgage encumbering 34 Palm Road, Rocky Point, New York 11778 (District: 0200, Section: 054.00, Block: 07.00, Lot: 073.002) (the “Property”). Pursuant to Fed. R. Civ. P. 55(a), the Clerk of the Court issued Certificates of Default against the Mortgagor Defendants as well as defendant Mortgage Electronic Registration Systems, Inc. as Nominee for Vertical Lend (“MERS”), Brookhaven Memorial Hospital (“Brookhaven”), and John Doe No. 1 through No. 12 (“the John Doe Defendants”) (collectively, with Mortgagor Defendants, “Defendants”), in light of their failure to answer or otherwise move with respect to the Complaint. On February 29, 2016, Plaintiff filed a motion seeking an Order (1) granting a default Judgment of Foreclosure and Sale against the Defendants, pursuant to Fed. R. Civ. P. 55(b)(2), and (2) amending the caption of this action to substitute Juan Hernandez and Jose Lopez in place of John Doe. No. 1 and John Doe No. 2, and to discontinue this action against the remaining John Doe Defendants.

By Order dated February 1, 2016, the Court referred the motion to Magistrate Judge A. Kathleen Tomlinson for Report and Recommendation on whether the motion should be granted, and if so, what relief, if any, should be awarded.

On August 5, 2016 Judge Tomlinson issued a Report and Recommendation recommending that (1) the motion to amend the caption of the Complaint (a) to replace John Doe No. 1 with Juan Hernandez, and John Doe No. 2 with Jose Lopez; and (b) to remove John Doe No. 3 through John Doe No. 12, and discontinue this action against those John Doe Defendants, be granted; (2) that a default judgment be entered against the Mortgagor Defendants; (3) that a default judgment be entered against MERS, Brookhaven, Hernandez and Lopez and that their respective interests in the Property be terminated; (4) that plaintiff be awarded the total principal due and owing in the sum of \$250,681.85, plus \$10,423.37 in interest up to February 29, 2016 and \$13.70 in interest per day thereafter, and \$15,983.48 for the tax advances; and (5) that the Property be foreclosed and sold, with the proceeds to be applied to the amount owed on the Note, including the advances for taxes set forth above, which, according to the Mortgage, are obligations secured by the Property and that a judgment of foreclosure and sale – substantially similar to the Proposed Judgment submitted by plaintiff – be executed as well.

More than fourteen days have elapsed since service of the Report and Recommendation and no objections have been filed.

Pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. The Court therefore adopts the August 5, 2016 Report and Recommendation of Judge Tomlinson as if set forth herein. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's the motion to amend the caption of the Complaint (a) to replace John Doe No. 1 with Juan Hernandez, and John Doe No. 2 with Jose Lopez; and (b) to remove John Doe No. 3 through John Doe No. 12, and discontinue this action against those John Doe Defendants, be GRANTED; and it is further

ORDERED that a default judgment be entered against the Mortgagor Defendants; and it is further

ORDERED that a default judgment be entered against MERS, Brookhaven, Hernandez and Lopez and that their respective interests in the Property be terminated; and it is further

ORDERED that plaintiff be awarded the total principal due and owing in the sum of \$250,681.85, plus \$10,423.37 in interest up to February 29, 2016 and \$13.70 in interest per day thereafter, and \$15,983.48 for the tax advances; and and it is further

ORDERED that the Property be foreclosed and sold, with the proceeds to be applied to the amount owed on the Note, including the advances for taxes set forth above, which, according to the Mortgage, are obligations secured by the Property. A separate judgment of foreclosure and sale is being entered this date by the Court.

Dated: Central Islip, N.Y.
August 26, 2016

/s/ Denis R. Hurley
Denis R. Hurley,
United States District Judge